

CHAPTER NO. 151

SENATE BILL NO. 2283

By Kyle, Henry

Substituted for: House Bill No. 2297

By McMillan, Sontany

AN ACT to amend Title 71 of the Tennessee Code Annotated, relative to child care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-3-501, is amended by adding before the semicolon at end of subsection (4) the following language:

, or that provides child care for five (5) or more children who are not related to the primary caregiver for three (3) or more hours per day

SECTION 2. Tennessee Code Annotated, Section 71-3-502(a)(1), is amended by deleting the words and punctuation "child care center, drop-in center, family child care home or a group child care home" and substituting instead the words "child care agency".

SECTION 3. Tennessee Code Annotated, Section 71-3-502(d), is amended by deleting subdivisions (1)-(4) in their entireties, and by substituting instead the following:

(1)(A) A person or entity that does not have an existing license may apply for either a restricted or unrestricted temporary license. The purpose of the temporary license is to permit the license applicant to begin the operation of a child care agency after meeting certain minimum requirements and to demonstrate during the temporary licensing period that it has the ability to attain and maintain compliance with all licensing laws and regulations.

(B) An applicant shall receive a temporary license upon the presentation of satisfactory evidence that:

(i) The facility that is proposed for the care of children has received fire safety and environmental safety approval, and that, after appropriate inspection, the department has determined that the site does not endanger the safety or welfare of children;

(ii) The applicant and the personnel who will care for the children are capable in all substantial respects to care for the children;

(iii) The applicant has the ability to attain and maintain compliance with the licensing laws and regulations both during the temporary and the annual license period;

(iv) The applicant, owner, director or an employee of the agency has not previously been associated in an ownership or management capacity with any child care agency that has been cited by the department for violations of this part or the department's regulations, including the agency for which the application is pending, unless the department determines that a reasonable basis exists to conclude that such individual is otherwise qualified to provide child care; and

(v) The criteria in § 71-3-502(a)(3) support the issuance of a restricted or unrestricted license.

(C) If the department determines that any of the criteria in subdivision (1)(B) has not been, or cannot be met, then it may deny the application for a temporary license; or, if the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.

(D)(i) Within one hundred twenty (120) days of the issuance of the temporary license, the department shall determine whether an annual or restricted annual license shall be issued to the applicant. If the department determines that the applicant has fully complied with all provisions of subdivision (1)(B) and with all other laws and regulations governing the specific classification of child care agency for which the application was made, and that the child care agency has demonstrated the ability to maintain compliance with all licensing regulations during the annual license period, and that it has a reasonable likelihood of maintaining annual licensure, the department shall issue an annual license; or, if the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.

(ii) If the applicant has not satisfactorily demonstrated compliance with the requirements for licensing as determined by the department, the annual license may be denied by the department.

SECTION 4. Tennessee Code Annotated, Section 71-3-502(g), is amended by adding the following language at the end of subsection (g):

Notwithstanding any other law to the contrary, in order to address the need for and encourage the development of extended child care for parents working at nights or on weekends, or for any other non-traditional child care needs for which the department determines that available child care is inadequate or unavailable in all or any part of the state, the department may promulgate rules pursuant to the Administrative Procedures Act, Title 4, Chapter 5, Part 2, providing for alternative fee schedules in order to recognize and encourage the development of care to meet such needs.

SECTION 5. Tennessee Code Annotated, Section 71-3-502(h), is amended by deleting the punctuation and words “, and child care centers” in the first sentence of subsection (h) and by substituting instead the punctuation and language “, child care centers and drop-in centers”.

SECTION 6. Tennessee Code Annotated, Section 71-3-502(d)(7)(C), is amended by adding the following as a new subpart (iv):

(iv) Vehicles used by a licensed child care agency for the transportation of children shall be subject only to color and marking requirements promulgated by the department and shall be exempt from any other such requirements which may be set forth in state law or local ordinance. Color and marking requirements shall be issued by the department, in consultation with the department of safety, as deemed appropriate for the safe operation, proper identification, or registration of the vehicle.

SECTION 7. Tennessee Code Annotated, Section 71-3-502(j)(5)(D), is amended by deleting the words and numbers, “three (3) times” in the first sentence of subdivision (D) and by substituting instead the word “once”.

SECTION 8. Tennessee Code Annotated, Section 71-3-503(a), is amended by deleting the introductory language and subdivision (1) in their entireties and by substituting instead the following:

(a)(1) A program or activity that falls within the definition of a child care agency shall be exempt from the licensing requirements of this part upon demonstration of clear and convincing evidence that it meets one of the following exemptions in subdivisions (2)-(12), or, if no specific exemption exists in subdivisions (2)-(12), there is clear and convincing evidence demonstrating that the program or activity meets the criteria of subsection (c).

SECTION 9. Tennessee Code Annotated, Section 71-3-503(a), is amended by deleting subdivisions (6), (8) and (9) in their entireties and by substituting instead the following:

(6) Educational Programs. To qualify for an educational program exemption, a child care agency must meet the following criteria:

(A) That the sole or primary purpose of the program is:

(i) to prepare children for advancement to the next educational level through a prescribed course of study or curriculum which is not typically available in a department-regulated child care setting;

(ii) to provide specialized tutoring services to assist children with the passage of mandatory educational proficiency examinations; or

(iii) to provide education-only services to special needs children; and

(B) That the program time scheduled to be dedicated to the educational activity is reasonably age appropriate for the type of activity and the ages served.

(8) Recreational programs. To qualify for a recreational program exemption, a child care agency must meet the following criteria:

(A) That the sole or primary purpose of the program or activity is to provide recreational services, e.g., organized sports activities or crafts activities;

(B) That the sole or primary purpose of the program or activity is dedicated to such recreational activities for a substantial portion of the hours of operation;

(C) That the majority of program staff responsible for the direct delivery of services possesses specialized qualifications that are directly related to the recreational services being offered;

(D) That at least seventy-five percent (75%) of any individual child's program time is spent engaging in the recreational activities that are reasonably age appropriate for the type of activity and the ages served;

(E) That the supervision or care of children, or other types of child care-related services, is incidental to its overall purpose; and

(F) That no individual child could participate in the program or activity:

(i) For more than seven (7) hours per day; or

(ii) If a child participates for more than seven (7) hours per day, that such child could not continue to participate for more than seven (7) consecutive weeks and for no more than one hundred twenty (120) days per calendar year.

(9) Camp Programs. To qualify for a camp program exemption, a child care agency must meet the following criteria:

(A) That the primary purpose of the program or activity is to provide intensive recreational, religious, outdoor or other activities that are not routinely available in full-time child care;

(B) That the program or activity operates exclusively during the summer months and less than ninety (90) days in any calendar year; and

(C) That the enrollment periods for participation in the program or activity clearly define the duration of the program or activity and exclude drop-in child care.

SECTION 10. Tennessee Code Annotated, Section 71-3-503, is amended by adding the following as a new subsection (c):

(c) In analyzing whether the program or activity is exempt pursuant to this section, unless the department determines upon clear and convincing evidence that the program or activity qualifies for an exemption based upon the criteria set forth in subdivisions (2)-(12), the department shall consider the following nonexclusive criteria to determine if the program or activity is clearly distinguishable from child care services typically regulated by the department and otherwise qualifies for exemption from licensing:

(1) The sole or primary purpose of the program or activity is to provide specialized opportunities for the child's educational, social, cultural, religious or athletic development, or to provide the child with mental or physical health services;

(2) The time period in which the program or activity provides these opportunities is consistent with a reasonable time period for the completion of the program or activity considering the age of each child served and the nature of the program;

(3) The primary purpose of the program or activity is not routinely available or could not be made routinely available in the typical child care settings regulated by the department;

(4) Parents could reasonably be expected to choose the program or activity because of the unique nature of what it offers rather than as a substitute for full-time, before or after school, holiday or weather-related child care; and

(5) If the program or activity is regulated by any other federal, state or local agency, it is required by such other agency to comply with standards which substantially meet or exceed department licensing regulations.

SECTION 11. Tennessee Code Annotated, Section 71-3-503, is amended by adding the following as a new subsection (d).

(d)(1) The department shall not be required to grant exemptions to programs or activities which offer otherwise exempt opportunities or services as a mere component of a program or activity which the department determines primarily constitutes substitute child care.

(2) No program or activity shall be exempt from licensing solely for the reason that the care and supervision of children that constitutes child care is offered only on a part-time or periodic basis.

(3) Exemption from licensure does not exempt the program or activity from compliance with any other local, state or federal requirements.

SECTION 12. Tennessee Code Annotated, Section 71-3-503, is amended by adding the following as a new subsection (e).


(e) A child care agency claiming an exemption pursuant to this part may submit to the department's licensing director, or designee, a sworn, written request for exemption in such manner and form as the department may require. The request shall provide a detailed description of the operation of the program or activity, the program's or activity's purpose and the applicant's basis for claiming an exemption. The department shall provide a written response to the exemption request stating the reasons the exemption was granted or denied.

SECTION 13. Tennessee Code Annotated, Section 71-3-506, is amended by deleting it in its entirety and by substituting instead the following language:

Any child care agency, as defined in this part, that is under the direct management or control of an administrative department of the state, a county, municipality, or development district, or any combination of these, shall be subject to licensure pursuant to this part; provided, however, the requirements for audits set forth in § 71-3-502(j)(6)(C) and (D) shall be satisfied by audits that are conducted by the comptroller or other public agency auditors.

SECTION 14. This act shall take effect upon becoming law, the public welfare requiring it.
PASSED: April 18, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 9th day of May 2005


PHIL BREDESEN, GOVERNOR